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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/14/2001

Paul A. Kline

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CAPITAL LEGAL GROUP, LLC
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EXAMINER

LI, SHI K

ART UNIT

PAPER NUMBER

2613

MAIL DATE

DELIVERY MODE

12/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/016,998	Applicant(s) KLINE, PAUL A.	
	Examiner Shi K. Li	Art Unit 2613	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,3,4,6,14-18,20-24,27-29,33-39,41,43-46 and 50.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Shi K. Li/
Primary Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues that routing data and a router are fully disclosed in the specification. However, instant specification fails to teach using a transformer bypass device together with a router. The Applicant argues that the above statement seems irrelevant to claims 20 and 36 which do not claim a transformer bypass device. However, claim 20 recites a first interface port, a second interface port and a third interface port. To the understanding of the Examiner, these three ports corresponding to the three ports of the power line bridge 301 of FIG. 3 of instant specification. Claim 46, which indirectly depends on claim 36, recites "a power line bridge" that is equivalent to a transformer bypass device. The Applicant argues that FIG. 6 depicts the fiber optical interface device 203 (which may perform routing) and the power line bridge 301 (a transformer bypass device). However, the interface device 203 routes data to the power line bridge and does not route data to "one of a plurality of communication devices located in one of a plurality of customer premises".

Regarding claim 20, the Applicant argues that FIG. 6 supports the third interface port. However, FIG. 6 does not support "a modem in communication with the fiber optic transceiver and the second interface port".

The Applicant argues "Brown1 fails to disclose a fiber optic transceiver as claimed. The components shown Figure 13 comprise a coaxial/fiber interface unit 138 and an amplifier (e.g. a broadband amplifier) 140. Col. 8, lines 52-57. Applicant submits that these components form an electro-optical converter and not a transceiver as claimed." The Examiner disagrees. A coaxial/fiber interface unit receives data from the fiber network, converts optical signal to electrical signal and transmits the data to the coaxial network in electrical format; the coaxial/fiber interface unit also receives data from the coaxial network, converts electrical signal to optical signal and transmits the data to the fiber network in optical format. Therefore, inherently, the coaxial/fiber interface unit contains transceivers.

The Applicant argues "router 124 shown in Figure 1 of Dhara is connected to the Internet and CMTS 120. There is no disclosure in Dhara of routing data [] to one of a plurality of communication devices located in one of a plurality of customer premises as required by the claims." First, instant specification admits on page 11 that fiber optic interface device may function as a router, well known to those skilled in the art, to distinguish data that are sent to various customer premises. Second, the router of Dhara performs the same function as routing data to various customers. Therefore, the combination of the references reads on the claimed invention.

The Applicant argues "The office action relies on TX/RX unit 1310 of Figure 13 of Brown2 for disclosure of this claim element. However, it is clear from Figure 13 that TX/Rx unit 1310 is not coupled to the low voltage power line and, therefore, does not comprise a transformer bypass device as claimed." The Examiner disagrees. Brown2 clearly shows in FIG. 13 that the TX/RX unit is coupled to L.V. supply, where L.V. stands for low voltage (400 V).

The Applicant argues "The office action cites to TX/RX unit 1310 of Figure 13 for disclosure of all of the components at the distribution transformer. The TX/RX unit 1310 is shown schematically in figure 12 as component 1203 does not include a modem 1204, a router, or fiber optic transceiver. Thus, none of prior art references relied upon disclose the subject matter of this claim element." The Examiner use FIG. 13 of Brown2 to illustrate that the idea of colocating various devices are well known in the art.

The Applicant argues "The office action and states 'Brown1 teaches in Figure 2 transceiver/modem between the network conditioning unit (corresponding to 136 of Figure 13) and optical network.' Conditioning unit 136 comprises a low pass filter and a high pass filter as is indicated by the symbols of the figure (see also Figure 11 b which includes labels). Thus, the arrangement of Figure 13 fails to disclose a modem. The arrangement of Figure 2 of Brown1 fails to disclose any fiber optic communications. Thus, the Examiner is inappropriately combining components from different embodiments of Brown1 (by combining the embodiments of Figures 2 and 13). In other words, Brown1 fails to disclose a modem in combination with a fiber optic transceiver as claimed." It appears that the Applicant argues that the conditioning unit is not a modem. However, FIG. 2 of Brown1 teaches transceiver/modem. The transceiver/modem of FIG. 2 is represented in FIG. 13 by the coaxial/fiber interface unit.

The Applicant argues "However, co-locating the components at the transformer does not shorten any wiring carrying hazardous voltages. Thus, the reason to combine the four prior art references is insufficient." "Colocate" means to locate together; esp. to place two or more units close together so as to share common facilities. FIG. 13 of Brown2 clearly illustrates such approach.

The Applicant alleges that the Office Action fails to state a valid reason to combine multiple references to reject many of the claims and requests the Examiner provide a reason to combine the references that does not use hindsight to allow Applicant an opportunity to refute such reasoning. The Examiner is afraid that he cannot fulfill Applicant's request. First, as admitted by Applicant, KSR states that there still must be a reason to combine. Neither KSR nor Applicant provides a clear guideline as what is consider a "valid" reason. While the Examiner has tried his best to provide convincing reasons for combining the references in the Office Actions, whether such reasons are acceptable by or have convinced the Applicant is out of the control of the Examiner..